

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**RMF INDUSTRIAL CONTRACTING,  
INC.**

**Plaintiff,**

**v.**

**RELIANT ENERGY SEWARD, LLC, and  
SEWARD TRUST,**

**Defendants.**

**Civil Action Nos. 2:03cv1231  
2:03cv1715**

**Consolidated at No. 2:03cv1231**

**RMF INDUSTRIAL CONTRACTING,  
INC.**

**Plaintiff,**

**v.**

**RELIANT ENERGY SEWARD, LLC,**

**Defendant.**

**ORDER OF COURT**

Before the Court for consideration and disposition are DEFENDANTS' MOTION TO STRIKE PARAGRAPHS 4 THROUGH 98 OF THE DECLARATION OF WILLIAM HARRINGTON (*Document No. 50*), the brief in support (*Document No. 48*), and Defendants' response and brief in opposition thereto (*Document Nos. 51 & 52*). The Court finds and rules that although some paragraphs of the Declaration of William Harrington may, as Defendants contend, be interpreted to impermissibly state legal conclusions, and may be irrelevant to the disposition of Defendants' Motion for Summary Judgment to Reduce the Amount of Plaintiff's Mechanic's Lien Claim, it is also possible that the information reflected in said paragraphs may, as Plaintiff contends, be admissible and relevant to the interpretation of allegedly ambiguous contractual language and the ascertainment of the intent of the parties.

Additionally, Defendants contend that William Harrington lacks personal knowledge of the statements contained in paragraphs 4 through 11 and 17 of his declaration, and that those paragraphs must therefore be based upon hearsay. The Court finds and rules that the evidence submitted to demonstrate William Harrington's alleged lack of personal knowledge does not convincingly do so, and that even if some of his statements are based upon or phrased in a manner which amounts to hearsay, "hearsay evidence produced in an affidavit opposing

summary judgment may be considered if the out-of-court declarant could later present that evidence through direct testimony, *i.e.* ‘in a form that would be admissible at trial.’” *Williams v. Borough of West Chester, Pa.*, 891 F.2d 458, 465 n.12 (3d Cir. 1989). Therefore, neither William Harrington’s alleged lack of personal knowledge nor the prohibition against hearsay provide a basis to strike paragraphs 4 through 11 and 17 from the Declaration of William Harrington.

NOW THEREFORE, this 6th day of October, 2005, it is hereby ORDERED that Defendants’ Motion to Strike Paragraphs 4 Through 98 of the Declaration of William Harrington (*Document No. 50*) is DENIED. However, the declaration will not be considered by the Court to the extent that it sets forth legal conclusions and/or is not relevant to the disposition of Defendants’ Motion for Summary Judgment to Reduce the Amount of Plaintiff’s Mechanic’s Lien Claim.

BY THE COURT:

s/ Terrence F. McVerry  
Terrence F. McVerry  
United States District Court Judge

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